

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 4659 of 2004

Mr.Chormale Rangnath Kashinath ..Petitioner

vs.

1. State of Maharashtra & Ors. ..Respondents

Shri A.M.Joshi for petitioner
Shri V.P.Malvankar, A.G.P. for respondent nos. 1
and 2.
Smt.S.S.Deshpande for respondent nos.3 and
4

**CORAM: A.P.SHAH AND
S.C.DHARMADHIKARI JJ
23rd NOVEMBER, 2004**

P.C.

1. Rule. Respondents waive service.

2. By consent rule is made returnable forthwith.

3. The petitioner came to be appointed as a peon on 10th June, 1998 in respondent no.3 school and since then he is in continuous service. A post of Junior Clerk has fallen vacant in the school as a result of promotion given to one V.L.Lokhande consequent upon the retirement of one Shri Raikar who was serving as a senior clerk. The respondent management has released an advertisement inviting applications for the post of Junior Clerk from the

public at large. The case of the petitioner is that the management is obliged to consider him for the post of Junior Clerk in view of Rule 12, Schedule F of M.E.P.S.Rules, 1981. The petitioner claims that during his service he has secured the minimum qualification of S.S.C. and he is fit for being appointed to the post of Jr.Clerk. It appears that the petitioner has made a representation to the Management as well as to the Education Officer (Secondary) for considering his case for the post of junior clerk but his representations failed to invoke any response.

4. Shri Joshi, learned Counsel appearing for the petitioner drew our attention to Rule 12 of M.E.P.S.Rules, 1981 which provide for maintaining seniority list of the employees working in the institution. Schedule F to which a reference was made in Rule 12 lays down guide-lines for fixation of seniority of teaching and non teaching staff. Item No.3 is relevant which provides fixation of seniority of non teaching staff. The relevant entry relating to lower grade staff reads as under:

"Lower Grade Staff. - A common seniority list of Laboratory Attendant, Naik, Oilman,

Machine Attendant, Peon, Watchman, Chowkidar, Sweeper, other lower grade staff, if any, shall be maintained on the basis of the dates of their appointment. If any of the lower grade staff improves his qualifications as prescribed either for the post of Laboratory Assistant or clerk, such employee should be given preference while filing in the said post according to his place in seniority."

5. Shri Joshi, learned Counsel, placed reliance on the decision of this Court on the point in Ashok Shankarrao Shinde Vs. Prabodhan Shikshan Sanstha, Nagpur and others, (1999) 1 Mh.L.J.348 wherein the Division Bench of this Court considered the provisions of Rule 12 of Schedule F and held that in case of non teaching staff, the possibility of promotion has to be read and Management is bound to consider the case of incumbent claimant to the promotional post. Unless he is found unsuitable recourse cannot be had to direct recruitment. In the instant case, it is not the case of the Management that the petitioner is not eligible. Hence the petitioner's case is required to be considered as laid down by Rule 12 of Schedule F.

6. in the above mentioned circumstances, in our opinion, the petition deserves to be allowed and is accordingly allowed. The action of respondent Management to issue advertisement is set aside. It is directed that the respondent Management will consider the case of the petitioner and if found fit will appoint him to the post of Junior Clerk. In case he is not found fit or suitable it is open for the management to take appropriate action in accordance with law.

7. Before parting with this matter we mention that the Government has filed an affidavit taking a stand that in view of bar on employment, the post cannot be filled in and in case the management makes appointment without permission from the Competent Authority no grant would be made available for the post. We express no opinion on the stand taken by the State Government and this issue is expressly left open.

8. Petition is accordingly disposed of.